

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GURMEJ S. GOSAL)	
Claimant)	
VS.)	
)	Docket No. 196,651
USC INDUSTRIES INC.)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY COMPANY)	
Insurance Carrier)	

ORDER

On November 19, 1996, the application of claimant for review by the Workers Compensation Appeals Board of the Award entered by Administrative Law Judge Alvin E. Witwer on July 12, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Mr. Mark A. Corder of Olathe, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Kip A. Kubin of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant's application for hearing was timely filed.
- (2) Claimant's average weekly wage.

- (3) The amount of compensation due.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrative Law Judge in the Award of July 12, 1996, denied claimant compensation, finding the claimant had failed to file his application for hearing with the Director within three years of the date of accident or within two years of last payment of compensation pursuant to K.S.A. 1990 Supp. 44-534(b). The Administrative Law Judge made note of a February 3, 1993, letter from counsel for the respondent denying payment for certain requested medical service and indicating future service for claimant's back would be considered unauthorized medical. The letter in question, from Mr. Kip A. Kubin, attorney for the respondent, to Mr. Scott K. Sherman of Overland Park, Kansas, was placed into the record by stipulation of the parties and received in the workers compensation division on February 22, 1996. The letter, noting that respondent had received a radiology bill for an MRI of claimant's spine, informed Mr. Sherman that the treatment for claimant's back was considered to be unauthorized medical and not related to claimant's work-related knee injury. Respondent also indicated that claimant had been rated and released from his knee treatment in November 1992.

While it is clear from the letter that the treatment for claimant's back was considered unauthorized from that point forward, the issue dealing with ongoing treatment to claimant's knee is not so clear. The medical records of Dr. Steven T. Joyce, claimant's authorized treating physician, were placed into the record during the deposition of Diane Carreon the legal assistant and maintainer of the medical records for the Dickson-Diveley Midwest Orthopaedic Clinic. Included in the medical records was a letter from Mr. Kubin to Dr. Joyce dated October 28, 1992, requesting a disability rating and further indicating that the October 16, 1992, note from Dr. Joyce appeared to indicate that claimant had been released from treatment. The November 4, 1992, response from Dr. Joyce contradicts Mr. Kubin's letter. Dr. Joyce replied that, while claimant did have a 15 percent impairment of the right lower extremity he continued to have right knee pain and Dr. Joyce expected to continue seeing claimant on an as needed basis. The medical records show that Dr. Joyce did continue to see claimant through 1992 and into 1993. In fact, additional letters from Mr. Kubin to Dr. Joyce in 1993 elicited an October 18, 1993, response from Dr. Joyce to Mr. Kubin stating that the impairment to claimant's right lower extremity had increased to 20 percent. Several entries throughout the record indicate claimant continued to receive authorized treatment for the knee into at least October 1993, under the supervision of Dr. Joyce.

K.S.A. 1990 Supp. 44-534(b) states:

"No proceeding for compensation shall be maintained under the workmen's compensation act unless an application for a hearing is on file in the office of the director within three (3) years of the date of the accident or within two (2) years of the date of the last payment of compensation whichever is later."

The parties stipulated that claimant's application for hearing was filed with the Director on December 29, 1994, by facsimile machine and the hard copy was filed on January 2, 1995. The Appeals Board finds that claimant's application for hearing was filed within two years of the date of the last authorized medical treatment and thus complies with the filing time limits required by K.S.A. 1990 Supp. 44-534(b).

With regard to the claimant's average weekly wage, the Appeals Board finds the award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The finding by the Administrative Law Judge that claimant's average weekly wage was \$756.63 per week is found to be supported by the evidence and the Appeals Board adopts same as its own finding.

In all other regards the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings expressed herein. Claimant's award shall be based upon a 42.5 percent permanent partial general body disability and a 24 percent functional impairment to the body as whole.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer dated July 12, 1996, should be, and is hereby, modified and an award is granted in favor of claimant, Gurmej S. Gosal and against the respondent, USC Industries, Inc. and its insurance carrier, Hartford Accident & Indemnity Company for an accidental injury arising out of and in the course of claimant's employment with an injury date of March 5, 1991.

An award of compensation is made in the accordance with the above findings in favor of the claimant, Gurmej S. Gosal and against the respondent, USC Industries, Inc. and its insurance carrier, Hartford Accident and Indemnity Company for a 24 percent whole body impairment of function through the last day of claimant's employment, January 3, 1994. Thereafter claimant is entitled to a permanent partial general body disability of 42.5 percent to the body as a whole.

Claimant is entitled to 19 weeks of temporary total disability compensation at the rate \$278.00 per week totally the sum \$5,282.00 followed thereafter by 128.86 weeks permanent partial functional impairment at the rate of \$121.07 per week through January 3, 1994 in the sum of \$15,601.08. Thereafter claimant is entitled to 267.14 weeks permanent partial general body disability at the rate of \$214.39 per week in the sum of \$57,272.14 for a total award of \$78,155.22.

As of April 29, 1997, claimant is entitled to 19 weeks temporary total disability compensation at the rate \$278.00 the sum of \$5,282.00 followed thereafter by 128.86 weeks permanent partial general body functional impairment at the rate of \$121.07 per

week in the sum of \$15,601.08 followed thereafter by 173.14 weeks permanent partial disability compensation at the rate of \$214.39 per week in the sum of \$37,119.48 for a total due and owing of \$58,002.56 minus any amounts previously paid.

Thereinafter, claimant is entitled to 94 weeks permanent partial disability compensation at the rate of \$214.39 per week in the sum of \$20,152.66 until fully paid or until further order of the Director.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it is not in contravention to the findings expressed herein.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are to be assessed against the respondent and its insurance carrier to be paid as follows:

Hostetler & Associates, Inc.	\$162.85
John M. Bowen & Associates	\$241.00

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark A. Corder, Olathe, KS
Scott K. Sherman, Overland Park, KS
Kip A. Kubin, Overland Park, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director